

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

RONALD J. DAVENPORT, et al.,
Defendants.

No. CV-08-158-FVS

ORDER ADOPTING DECEMBER
17, 2009, REPORT AND
RECOMMENDATION

THIS MATTER comes before the Court without oral argument. The United States is represented by W. Carl Hankla and Michael Hatzimichalis. Ronald J. Davenport is representing himself.

BACKGROUND

On October 20, 2009, the government filed a motion for sanctions based upon Ronald J. Davenport's alleged failure to provide discovery as ordered by the Court on September 23, 2009.

On December 7, 2009, the Court referred the government's motion to Magistrate Judge James P. Hutton for a report and recommendation.

On December 17, 2009, Magistrate Judge Hutton filed a report indicating Mr. Davenport wrongfully failed to provide discovery in violation of the Federal Rules of Civil Procedure. Magistrate Judge Hutton recommended sanctions: first, that the Court enter a default judgment against Mr. Davenport; second, that the Court require him to pay the attorneys' fees and costs the government has incurred as a

1 result of bringing its motion for sanctions.

2 On December 22, 2009, the government filed a motion asking the
3 Court to vacate the scheduling order pending resolution of its
4 discovery dispute with Mr. Davenport.

5 On December 23, 2009, Mr. Davenport filed a paper that arguably
6 constituted an effort to assert a third-party claim against the Court.

7 On December 28, 2009, Mr. Davenport filed objections to
8 Magistrate Judge Hutton's report and recommendations.

9 On December 30, 2009, the government filed a response to Mr.
10 Davenport's objections.

11 On January 6, 2010, the Court disqualified itself given Mr.
12 Davenport's attempt to assert a third-party claim.

13 On January 11, 2010, the Court asked the Chief Judge of the
14 United States District Court for the Eastern District of Washington to
15 assign the matter to another district judge for the purpose of
16 determining whether Mr. Davenport may prosecute a third-party claim in
17 the instant action. The Chief Judge assigned the matter to United
18 States District Judge Edward F. Shea.

19 On February 25, Judge Shea struck Mr. Davenport's putative third-
20 party claim.
21

22 **RULING**

23 A. Disqualification

24 In view of Judge Shea's order of February 25th, the Court is no
25 longer a party to this action. Thus, the Court vacates its order of
26 January 6, 2010. The Court will preside over this case.

1 B. Report and Recommendation

2 Magistrate Judge Hutton prepared a thorough and thoughtful
3 report. Mr. Davenport's objections are frivolous. Consequently, the
4 Court adopts Judge Hutton's report. As he explains therein, Federal
5 Rule of Civil Procedure 37(b) (2) (A) (vi) authorizes a judge to enter a
6 default judgment against a person who fails to obey a discovery order.
7 Mr. Davenport disobeyed the Court's order of September 23, 2009,
8 despite being warned of the potential consequences of disobedience.
9 The Court agrees with Magistrate Judge Hutton that the appropriate
10 sanction is entry of a default judgment. The next step is to decide
11 what the judgment should say. To that end, the government shall
12 submit a proposed order of default that does two things: first,
13 declares Mr. Davenport to be in default as a result of his failure to
14 provide discovery and, second, sets forth the terms of the default
15 judgment the government seeks. The Court reserves ruling with respect
16 to attorneys' fees and costs. If the government continues to seek
17 them, it must file documentation supporting the sums it requests.

18 **IT IS HEREBY ORDERED:**

- 19
- 20 1. The Court **vacates** its disqualification order of January 6,
21 2010.
- 22 2. The Court **adopts** the Report and Recommendation submitted by
23 Magistrate Judge James P. Hutton (**Ct. Rec. 87**).
- 24 3. To the extent indicated above, the Court **grants** the
25 government's motion for sanctions (**Ct. Rec. 72**).
- 26 4. The Court **grants** the government's motion to vacate (**Ct. Rec.**

1 88) the scheduling order that was entered on February 6, 2009. The
2 Court will conduct another scheduling conference as needed.

3 5. Within eleven days of entry of this order, the government
4 shall submit a proposed order of default.

5 6. If the government seeks attorneys' fees and costs, it shall
6 submit a documented request within eleven days of entry of this order.

7 **IT IS SO ORDERED.** The District Court Executive is hereby
8 directed to enter this order and furnish copies to counsel and Mr.
9 Davenport.

10 **DATED** this 26th day of February, 2010.

11
12 s/ Fred Van Sickle
13 Fred Van Sickle
14 Senior United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26